

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1874 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
3 to 5 No
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HEIRS & LEGAL REPRESENTATIVES OF PRABHUDAS RAMDAS PATEL

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

MR DD VYAS for Petitioners

Mr. Mrugen Purohit for MR PRASHANT G DESAI for Resp.No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 05/09/98

ORAL JUDGEMENT

1. The petitioner has raised a short issue. The petitioners are the joint owners of final plot No.221 admeasuring 2526.50 sq.meters. The land falls in the revised draft development plan of the Ahmedabad Municipal Corporation which had come into force on 15th September, 1983. The petitioners are joint owners of the plot in

question. At one point of time, the said land has been

divided by the petitioners in accordance with their shares. The land in question has been shown as reserved for the housing purposes of Ahmedabad Municipal Corporation in the Draft Development Plan. At one point of time, the Corporation initiated acquisition proceedings. However, vide communication dated 6.10.1988 the acquisition proceedings were withdrawn under Section 48(1) of the Land Acquisition Act. Since the land was reserved for the purpose of Ahmedabad Municipal Corporation, no steps have been taken for use of the said land for the purpose for which it has been reserved. The petitioners desirous of sub-dividing the plan as per their share applied for necessary permission, which has been refused solely on the ground that land is shown to be reserved for the purpose of AMC vide impugned order dated 22nd January, 1997. It is further not in dispute that since 3rd December, 1997, the said draft development plan has lapsed and plot as such is not reserved for any purpose today.

2. This court has consistently taken the view that any premise for development or sub-division or for use within the permissible sphere of law as the owner of the land in exercise of its rights and enjoyment is not truncated merely because the land has been shown as reserved for the purpose in the master plan. The owner does not lose his right of ownership, right to enjoy the

property until the same is acquired and vested in the authority for the purpose or the authorities are able to show that it has taken steps to utilise the land for the purpose for which it has been reserved and is likely to utilise the same within a reasonable proximity of period. The fact that until the property is acquired and utilised by the authorities for the purpose for which it has been reserved, the owner is entitled to use does not affect the rights of the authority for whose purpose the land is reserved inasmuch as the owners use is subject to intended acquisition so long as the reservation subsists.

3. Reference has been made to decision of this Court in Spl. C.A. No. 2379 of 92 decided on 27.12.1992. The question that arose for consideration before this court was whether the Corporation can without anything more and simply on the ground that land is reserved for a public purpose rejected the application for development. It has answered in the negative. The court opined

considering provision of Sec. 20 of the Act of 76 that the said provisions cannot be construed as debarring the owners from seeking the permission for development simply because the land is shown as reserved for public purpose before acquisition proceedings are commenced, whether by negotiation or by resorting to proceedings under Land Acquisition Act 1894. Aforesaid decision was challenged by way of LPA No. 55 of 1994 which was dismissed by Bench on 26.7.1994.

4. Owners rights to enjoy his land with the said risk are not jeopardized on making an expression of intention to acquire is amply clear from another Bench Decision of this court. Before a Division Bench of this Court in SURAT MUNICIPAL CORPORATION v. BHIKHABHAI MARARBHAI PATEL, reported in 1994 (2) GLR 947, the question had arisen for consideration where owners of parcels of land falling within the Municipal limit of Surat Municipal Corporation had applied for permission for sanctioning the building plans which the Corporation rejected on the ground that it was contemplating to acquire the land for public purpose and has requested government for acquiring the land as they have failed to acquire the same by agreement. The Division Bench opined:

that the Corporation Act does not compel the Corporation to commence the acquisition proceedings under the Land Acquisition Act within a stipulated period. If the contention of the learned counsel for the applicant is accepted, the effect would be that the respondents, who are the owners of the land, would be deprive of its use, merely because the Corporation contemplates to acquire the said property. Such contemplation may continue for a number of years because, as already observed, there is no time limit within which the Notification under Sec. 4 of the Land Acquisition Act should be issued.

"The respondents cannot construct without the building plans being approved by the Corporation. When there is no other legal impediment in the way of the respondents to construct, it would, in our opinion, be an arbitrary exercise of the power on behalf of the Corporation in not considering the building plans merely because an order under Section 78 of the Corporation Act has been passed. It is no doubt true that the passing of such an order would indicate that the property in question is likely to be acquired,

but that is the risk which the respondents face when they apply for sanction of the building plan notwithstanding the intended acquisition. As far as the Corporation Act is concerned, the passing of an order under Sec. 78 is not a ground for rejecting or not considering the building plans for sanction. We are, therefore, in agreement with the learned single Judge, who came to the conclusion that the Corporation could not reject building plans merely because they were contemplating to acquire the same."

5. It can be said that merely because the land is shown for a particular purpose in a development plan does not compel the development authority or for whose purpose the land is so reserved for use to acquire the land or use within the stipulated period. It merely indicates that the property in question is liable to be acquired for the purpose. The period fixed in Sec. 20 also does not compel the authorities to acquire the land within that period. It only enables the owners to give notice for acquisition thereafter. Before that owners cannot ask for acquisition either. What the act contemplates under Sec. 20 of the Act is that if within 10 years the land is not acquired, the owner or any person interested in the same gets a right to serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of such notice land is not acquired or no steps are commenced for its acquisition, the designation of the land shall be deemed to have lapsed.

6. In the face of these provisions the respondent in plan only expressed intention to acquire the land for the purpose so declared but with no compulsion to acquire the same within any stipulated period. It continues to remain such expression of intention until it is acquired in fact or lapses on expiry of stipulated period after service of notice. Until the land is acquired the owners do not lose their right of ownership and to enjoy the property as an owner. There is no impediment on the use of such right in respect thereto, subject to the possibility that the land can be made subject matter of acquisition.

7. It is also contemplated that after lapse of period shown in Section 20(2) the land can again be reserved for same or other purpose subject to the same limitation. If the contention of the respondents were to be accepted that once the land is reserved for development no sub-division can be granted, it would only

mean that the authority can by successive declaration of reservation without resorting to the acquisition of the land can successfully deprive the owner of his right to enjoy the property without any consequence. That cannot be the intention of the legislation in enacting the said provision.

8. Moreover, in the present case as noticed above as on today the reservation under the plan has already lapsed on 3rd December, 1997 and no new plan has yet come into force. Therefore, there is no impediment for the respondents to consider the application for sub division on merit without rejecting the same solely on the ground that the same is likely to be required or is being considered for reservation.

9. That apart, mere sub division of the plot does not affect in any manner the purpose of reservation even if the same is liable to be acquired. The issue of permitting sub division amongst joint owners has no bearing on the question of ultimate intention of the respondent to acquire land for the purpose for which it has been reserved. The division of land or for that matter any property amongst joint owners is merely an act of crystallisation and separation of existing interests. Itr does not result in creation of new interests. Section 20 of Town Planning Act does not in any way obstructs the crystallisation and determining existing rights. Recognition of such rights also do not adversely affect the object and purpose of Sec. 20 of the Act of 76 though the issue may have some bearing if the development by way of construction is sought and the authority is contemplating its utilisation for reserved purposes in near proximity of that time.

10. The petition therefore succeeds and the impugned order dated January 22, 1997 is quashed and the respondents are directed to decide the application afresh in accordance with law.

11. Rule is made absolute. There shall be no order as to costs.

p.n.nair